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REMARKS

Reconsideration of the present application as amended is requested. Following several preliminary amendments, this application included claims 98-200. In this Office Action, seven groups of claims were identified as allegedly defining distinct inventions. Applicants provisionally elect the claims of Group II, namely claims 117-129. This election is made with traverse. Applicants have cancelled claims 130-200 without prejudice to consideration in a continuing application. However, Applicants have not cancelled claims 98-116 of Group I because it is believed that all of these claims can be considered together in this application.

With respect to the invention of Group I directed to a method for distracting two tissue surfaces in a given direction, it was suggested that the claims could somehow read on a surgeon using his/her own hands to pull tissue apart. However, method claim 98 calls for "consecutively introducing a plurality of elements in contact with each other between the tissue surfaces". Method claim 111 also recites consecutively introducing a plurality of elements in contact with each other. It is very difficult to see how manually pulling tissue apart would fall within the scope of this claim. Method claims 98 and 111 of Group I, like apparatus claim 117 of Group II, requires introduction of a plurality of elements in contact with each other. Claims 98, 111 and 117 all recite consecutive introduction of the elements between the tissue surfaces.

The process of method claims 98 and 111 cannot be practiced with an apparatus that is materially different from that recited in claim 117. As explained above, the independent claims of both Group I and II include the same limitations of a plurality of elements, consecutive introduction, contact between each of the elements, and distraction or support in a given direction. This commonality also means that the apparatus of claim 117 cannot be used to practice another process that is materially different from the process of the claims in Group I. Moreover, the prior art search for the claims in either Group I or Group II will certainly cover the same territory and will not be limited to the specific classification for either group.

In addition to the restriction requirement, a requirement for election of a species was also issued in the Office Action. Applicant elects species XIII of Figures 24-26 with traverse. It is believed that at least the following claims are readable on the elected species: 98 – 100, 103, 104, 107 – 114, 117, 118, 121, 125, and 126 – 129. It is further believed that the following claims are generic to all species of the wafers: 98 – 100, 103, 104, 108 – 114, 117, 118 and 127-129.

However, each of the non-elected species are so similar to the elected species that no burden would be imposed by considering all wafer species in the present application. As

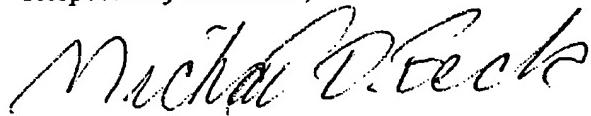
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indicated above, the majority of the claims 98-129 are generic to all species of wafers shown in the figures.

It is therefore believed that examination should proceed as to claims 98-129. Since each of Applicants' elections have been made with traverse, Applicants have only cancelled the claims for which an unqualified withdrawal has been made, namely claims 130-200. Applicants have also added new claims 201-204, with claim 204 corresponding to the elected species.

Reconsideration of the restriction/election requirement for the reasons set forth above is requested. It is further requested that claims 98-129 and 201-204 pass to substantive review.

Respectfully submitted,



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